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Attorneys for Third Party Respondent  
EXP PHARMACEUTICAL SERVICES CORP.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

PHARMACEUTICAL INVENTORIES, INC.  
d/b/a PHARMACEUTICAL RETURNS  
SERVICE,

Plaintiff,

v.

MICHAEL ZACCARO and RETURNS R US  
INC. d/b/a PHARMA LOGISTICS, LTD.,

Defendants.

CASE NO. 07-MC-80231-SBA (MEJ)

**STIPULATION AND ~~PROPOSED~~ ORDER  
REGARDING DEFENDANT MICHAEL  
ZACCARO'S MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS FROM  
THIRD PARTY EXP PHARMACEUTICAL  
SERVICES CORP.**

Date: n/a  
Time: n/a  
Courtroom: B, 15th Floor  
Judge: Hon. Maria-Elena James

**STIPULATION**

WHEREAS,

On or about July 13, 2007, defendant Michael Zaccaro ("Zaccaro") served a subpoena upon EXP Pharmaceutical Services Corp. ("EXP"), a non-party in the underlying action pending in the United States District Court for the Northern District of Illinois;

WHEREAS,

The subpoena directed EXP to produce certain documents and designate a witness to testify regarding the authenticity of the documents it produced;

WHEREAS,

EXP subsequently complied in part with the subpoena by producing a subset of the documents sought by Zaccaro, but objected to production of certain other relevant documents;

WHEREAS,

The parties met and conferred in an attempt to resolve their dispute regarding production of the remaining documents sought by the subpoena but were unable to do so;

WHEREAS,

On October 1, 2007, Zaccaro moved for an order under Rule 45(c)(2)(B) of the Federal Rules of Civil Procedure seeking to compel EXP to produce the documents at issue and requiring EXP to designate a witness for deposition who could verify that the documents EXP produced are genuine business records of the company;

WHEREAS,

EXP maintained its objection to production of the documents sought by Zaccaro's motion and, on October 16, 2007, filed a brief and supporting evidence in opposition to Zaccaro's motion;

WHEREAS,

Upon the Court's referral of Zaccaro's motion to the Honorable Maria Elena-James, the motion was ordered taken off calendar and the parties were ordered to further meet and confer regarding the motion;

1 WHEREAS,

2 The parties met and conferred and reached agreement on a procedure that the parties  
3 believe will obviate the need for further motion practice;

4 WHEREAS,

5 Pursuant to the agreement reached by the parties, in lieu of producing the documents  
6 sought by Zaccaro in his motion to compel and in satisfaction of the subpoena:

7 1. EXP will provide to Zaccaro a declaration signed by its Chief Executive Officer,  
8 Gus Changaris, that describes the 12 categories of screen prints sought by Zaccaro and indicates  
9 how EXP's software system fulfills the general functionality identified in those categories, as  
10 applicable. The declaration shall be in substantially the same form as the unsigned declaration  
11 provided to counsel for Zaccaro on November 20, 2007;

12 2. EXP will produce Mr. Changaris for a deposition at which he will testify about  
13 the twelve categories of information set forth in his declaration and authenticate and describe the  
14 nature of the documents previously produced by EXP;

15 3. The declaration of Mr. Changaris will be marked "HIGHLY CONFIDENTIAL,  
16 ATTORNEY'S EYES ONLY, CONFIDENTIAL INFORMATION OF THIRD PARTY EXP  
17 PHARMACEUTICAL SERVICES, CORP." pursuant to a Restricting Order issued in the  
18 primary proceeding (Northern District of Illinois);

19 4. The Restricting Order will apply to EXP with the following modifications:

20 a. Any party seeking to disclose information that EXP designates "HIGHLY  
21 CONFIDENTIAL: ATTORNEYS' EYES ONLY ("EXP's Confidential Information") to an  
22 independent consultant or expert is required to disclose to EXP the identity of the independent  
23 consultant or expert to whom the information is being disclosed;

24 b. EXP shall be given a copy of the Restricting Agreement signed by any  
25 independent consultant or expert that receives EXP's Confidential Information;

26 c. The identity of the independent consultant or expert shall be disclosed  
27 only to EXP and not to any other party in the Underlying Litigation; and

28 d. The disclosure of the identity of the independent consultant or expert to

EXP shall not constitute a waiver of the work product privilege.

NOW, THEREFORE,

The parties hereby STIPULATE that in lieu of producing the documents sought by Zaccaro in his motion to compel and in satisfaction of the subpoena:

1. EXP will provide to Zaccaro a declaration signed by its Chief Executive Officer, Gus Changaris, that describes the 12 categories of screen prints sought by Zaccaro and indicates how EXP's software system fulfills the general functionality identified in those categories, as applicable. The declaration shall be in substantially the same form as the unsigned declaration provided to counsel for Zaccaro on November 20, 2007;

2. EXP will produce Mr. Changaris for a deposition at which he will testify about the twelve categories of information set forth in his declaration and authenticate and describe the nature of the documents previously produced by EXP;

3. The declaration of Mr. Changaris will be marked "HIGHLY CONFIDENTIAL, ATTORNEY'S EYES ONLY, CONFIDENTIAL INFORMATION OF THIRD PARTY EXP PHARMACEUTICAL SERVICES, CORP." pursuant to a Restricting Order issued in the primary proceeding (Northern District of Illinois);

4. The Restricting Order will apply to EXP with the following modifications:

a. Any party seeking to disclose information that EXP designates "HIGHLY CONFIDENTIAL: ATTORNEYS' EYES ONLY ("EXP's Confidential Information") to an independent consultant or expert is required to disclose to EXP the identity of the independent consultant or expert to whom the information is being disclosed;

b. EXP shall be given a copy of the Restricting Agreement signed by any independent consultant or expert that receives EXP's Confidential Information;

c. The identity of the independent consultant or expert shall be disclosed only to EXP and not to any other party in the Underlying Litigation; and

d. The disclosure of the identity of the independent consultant or expert to EXP shall not constitute a waiver of the work product privilege.

1 Dated: January 4, 2007

Respectfully submitted,

2 LATHAM & WATKINS LLP

3  
4 By: /s/  
John D. Minton

5 Attorneys for Defendant  
6 MICHAEL ZACCARO

7 Dated: January 4, 2007

Respectfully submitted,

8 MYERS, HAWLEY, MORLEY, MYERS &  
9 MCDONNELL

10 By: /s/  
Paul I. Myers III

11 Attorneys for Third Party Respondent  
12 EXP PHARMACEUTICAL SERVICES CORP.

13  
14 Filer's Attestation: Pursuant to General Order No. 45, § X(B), I attest that concurrence in  
15 the filing of this document has been obtained from its signatory.

16 Dated: January 4, 2007

17 /s/  
John D. Minton

18  
19 **[PROPOSED] ORDER**

20 The Court having considered the parties' stipulation, and good cause appearing, IT IS  
21 HEREBY ORDERED that in lieu of producing the documents sought by Zaccaro in his motion  
22 to compel and in satisfaction of the subpoena:

23 1. EXP will provide to Zaccaro a declaration signed by its Chief Executive Officer,  
24 Gus Changaris, that describes the 12 categories of screen prints sought by Zaccaro and indicates  
25 how EXP's software system fulfills the general functionality identified in those categories, as  
26 applicable. The declaration shall be in substantially the same form as the unsigned declaration  
27 provided to counsel for Zaccaro on November 20, 2007;

2. EXP will produce Mr. Changaris for a deposition at which he will testify about the twelve categories of information set forth in his declaration and authenticate and describe the nature of the documents previously produced by EXP;

3. The declaration of Mr. Changaris will be marked "HIGHLY CONFIDENTIAL, ATTORNEY'S EYES ONLY, CONFIDENTIAL INFORMATION OF THIRD PARTY EXP PHARMACEUTICAL SERVICES, CORP." pursuant to a Restricting Order issued in the primary proceeding (Northern District of Illinois);

4. The Restricting Order will apply to EXP with the following modifications:

a. Any party seeking to disclose information that EXP designates "HIGHLY CONFIDENTIAL: ATTORNEYS' EYES ONLY ("EXP's Confidential Information") to an independent consultant or expert is required to disclose to EXP the identity of the independent consultant or expert to whom the information is being disclosed;

b. EXP shall be given a copy of the Restricting Agreement signed by any independent consultant or expert that receives EXP's Confidential Information;

c. The identity of the independent consultant or expert shall be disclosed only to EXP and not to any other party in the Underlying Litigation; and

d. The disclosure of the identity of the independent consultant or expert to EXP shall not constitute a waiver of the work product privilege.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: February 4, 2008



The Hon

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